36 **S.B. CIVIL MISC. APPEAL NO.144/2007.**
Channa Ram & Anr. Vs. Raju Das

Date of Order :: 11th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Pradeep Choudhary, for the appellants.

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This appeal has been preferred by the driver and owner of the vehicle involved in accident against the award dated 10.01.2006 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.15/2002 seeking to question the findings on responsibility towards accident and so also on quantification of compensation awarded to the claimant in the sum of Rs. 48,500/- for the loss suffered by him due to the injuries sustained in accident.

Brief facts of the case noticeable from the impugned award are that at about 1:45 p.m. on 11.10.2001 the claimant-respondent Raju Das, riding his Vicky moped bearing registration No. RJ 04 1M 4042 on Balotra to Samdari road, sustained grievous injuries on being hit by an oncoming tractor bearing registration No. RJ 15 R 719 driven by the appellant No.1 Channa Ram and belonging to the appellant No.2 Shiv Ram.

Narrating the incident, the injured made a claim for compensation and submitted that he sustained grievous

injuries including compound fracture of femur bone; that he was taken to Nahata Hospital, Balotra and thereafter remained hospitalised for 23 days at M.G. Hospital, Jodhpur; that the FIR in relation to the incident was lodged at Police Station, Balotra and after investigation, challan was filed against the the tractor driver. Stating the amount spent on treatment, transportation, diets and also alleging loss of earning capacity, loss of amenities of life, pains and sufferings, the claimant sought compensation in the sum of Rs.3,77,000/-. The non-applicants-appellants put the claim to contest, inter alia, on the submissions that the claimant was driving his Vicky moped in brisk speed and negligently; and suddenly skidded in front of the tractor.

After framing of necessary issues by the Tribunal, the claimant examined himself as AW-1 and produced relevant documentary evidence, Exhibits 1 to 86. However, no evidence was led by the non-applicants.

After considering the material available on record including the statement of the claimant; and after taking note of the fact that the non-applicants though attempted to deny the accident to have occurred from the tractor, suggested it being the result of skidding of the moped and also noticed the omission on the part of the non-applicants in leading any evidence in rebuttal of the assertion of the claimant that the

tractor hit him on the wrong side. The Tribunal also referred to the claimant's X-ray report (Ex.13) showing fracture of left femur bone and so also the disablement certificate (Ex.86) putting his disability at 7%. The Tribunal held the non-applicants liable for compensation and quantified the same at Rs.48,500/- while treating the claimant as skilled labourer and allowing Rs.8,000/- towards loss of income for 100 days; Rs.8,950/- towards medicines; Rs.2,550/- towards transportation; Rs.500/- towards special diets; Rs.3,500/- towards attendant and Rs.25,000/- for pains and sufferings and loss of amenities of life.

The appellants seek to contend in this appeal that the claimant has admitted having not seen the registration number of the tractor and in his statement before the Tribunal gave out such registration number as “R 15 R 719” whereas the registration number of their tractor was “RJ 15 R 719”; that the injury and X-ray reports have not been proved as the doctor and the radiologist concerned were not produced in evidence; that the disablement certificate too could not have been relied upon for want of examination of the concerned doctor; and that the Tribunal has awarded excessive amount towards compensation.

Having examined the impugned award and having heard learned counsel for the appellants, this Court is satisfied

that this appeal remains wholly bereft of substance and does not merit admission.

So far the question of identity of the vehicle involved in accident is concerned, suffice is to notice that in view of the defence taken by the appellants that the accident occurred for skidding of the moped in front of their tractor, the contention related with the registration number of the vehicle turns out to be wholly irrelevant because the factum of accident from the tractor of the appellants remains undeniable. Registration number of the tractor in question, even if occurring as “R 15 R 719” in the oral statement of the injured-claimant, cannot have any adverse effect on his claim for compensation when the offending vehicle's registration number 'RJ 15 R 719' is otherwise available in police investigation papers. In fact, the discrepancy appears to be only a result of typographical error for the registration number as allegedly stated by the claimant is obviously incomplete.

In the present case, the significant fact remains that the claimant appeared in evidence as AW-1 and produced relevant documentary evidence and asserted that the accident was caused by rash and negligent driving of the tractor in question and that he was hit on the wrong side of the road. The evidence of the claimant has gone unrebutted for the non-applicants not leading any evidence at all. Then, for non-

production of the driver of the tractor involved in the accident, an adverse inference directly arises against the non-applicants. In this view of the matter, the finding by the Tribunal on responsibility towards accident calls for no interference.

So far the medical evidence is concerned, the claimant has established the fundamental facts by production of the injury and X-ray reports prepared by the doctor/radiologist concerned in discharge of their official duties and there appears no necessity of producing them in proof of such reports. The Tribunal has also noticed that the disablement certificate (Ex.86) has been issued by the Junior Specialist (Orthopedics) of the Government Hospital, Balotra certifying the disability of the claimant at 7% and there was no reason to disbelieve the same.

The award on its quantification of compensation at Rs.48,500/- only appears to be moderate and rather on the lower side when examined in the context of the facts that the injured-claimant suffered fracture of left femur bone and remained hospitalised for 23 days and when the Tribunal has not allowed any amount towards loss of future earning capacity.

In the ultimate analysis, there appears no scope for interference in the award made by the Tribunal at the

instance of the appellants, driver and owner of the vehicle involved in accident.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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